

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1094 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

MUMTAZ MOHD. ALI VIRANI

Versus

UPLETA NAGAR PALIKA

Appearance:

MR BA SURTI for Petitioner
None present for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/01/2000

ORAL JUDGEMENT

Heard the learned counsel for the petitioner.

1. In a suit filed by the plaintiff- petitioner in his service matter, both the courts below declined temporary injunction. Hence this revision application.

2. Both the courts concurrently held that the appointment of the petitioner on the post of Female Health Worker is made in violation of Rule 25 of the Rules framed by Nagar Palika under section 271 of the Gujarat Municipalities Act. The appointment of the petitioner on this post was taken to be illegal and the court stated that no direction can be given to the extent by way of interim injunction to continue her in service. So the courts found that the petitioner has no *prima-facie* case for grant of interim injunction. Both the courts have also held that non-grant of interim relief to the petitioner is not likely to cause any irreparable injury to the petitioner, which can not be compensated in terms of money. Learned first appellate court was perfectly correct in its approach that if ultimately the plaintiff- petitioner succeeds in the suit she will get all the pay and allowances payable to her. Declining of temporary injunction/interim relief, rightly the first appellate court stated will not result in irreparable injury or loss to her which cannot be compensated in terms of money. Balance of convenience is also taken to be not favouring the grant of temporary injunction. Learned first appellate court is correct in its approach that if such employee is continued in service by orders of the civil court it will unnecessarily burden the Municipality. Grant of temporary injunction is a discretionary relief and when the learned trial court has not considered it to be a fit case to exercise this discretion in favour of the plaintiff- petitioner, the appellate court has very very limited power of interference therein and in a case where the appellate court has also confirmed the order of the trial court, this court has very very very limited power of interference. The first appellate court has not considered it to be a fit case for interference and rightly so. The first appellate court even after knowing very well the limitation of its power to be exercised in such matters still has gone into the matter in depth as if it is a regular first appeal. It is different matter that still the plaintiff petitioner is not satisfied.

3. Learned counsel for the petitioner, leaving apart the *prima-facie* case, failed to satisfy this court how in case the temporary injunction is not granted to the plaintiff - petitioner she will suffer any irreparable injury which cannot be compensated in terms of money. If ultimately she succeeds in the suit, the court will grant her all the relief but in case by way of temporary injunction, relief of the nature as prayed for is granted, it will certainly amount to granting of the

final relief by way of interim relief which time and again the Hon'ble Supreme Court has deprecated. Reference in this respect may have to the following decisions of the Apex Court:

(i) State of U.P. vs. Vishweshwar reported in 1995 (Supp) (3) SCC 590.

(ii) Bank of Maharashtra vs. Race Shipping & Trans. Co. reported in AIR 1995 SC 1368.

(iii) Shiv Kumar vs. Board of Directors reported in 1995 (2) Supp SCC 726.

4. In fact, this matter is squarely covered by the two decisions of the Apex Court in the case of D.L.F. Housing vs. Sarup Singh reported in AIR 1971 SC 2324 and in the case of Hindustan Aeronautics vs. Ajit Prasad reported in AIR 1973 SC 76.

5. It is different matter that in this State litigants consider their right to get interim relief when they approach the court. It is misconception of law. Revisions are also filed as if it is a remedy of right or course. This is again misconception of law. This is the matter where despite of the fact that two courts below have concurrently decided on all the three ingredients which are to be considered while granting the temporary injunction under Order 39 Rule 1 and 2, C.P.C. and were held to be against the plaintiff- petitioner, learned counsel for the petitioner argued the matter as if this court is sitting as a trial court or the first appellate court.

6. This revision application is wholly misconceived and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. However, looking to the facts of this case and that it is a service matter in which that much of oral evidence is not required and the case wholly depends on the documentary evidence coupled with the fact that the petitioner shall remain out of employment, learned trial court is directed to decide the suit itself finally within a period of nine months from the date of the receipt of writ of this order or certified copy thereof, which ever is earlier. Compliance of this order be reported to the court.

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